

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

JOHN OLIVER EDWARDS,

Plaintiff

v.

C-1-01-582

IOF FORESTERS SEVERANCE  
PAY PLAN, *et al.*,

Defendants

**ORDER**

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no. 49), plaintiff's objections (doc. no. 52); defendants' response (doc. no. 53) and plaintiff's reply (doc. no. 54). The Court held oral arguments on June 15, 2004. The Magistrate Judge concluded that 1) Jane Corbet was the properly appointed Plan Administrator and there exists no conflict of interest; 2) plaintiff's claim was timely filed; 3) the Plan Administrator had a rational basis for the denial of plaintiff's claim; 4) the Plan Administrator did not breach any fiduciary duty to plaintiff; and 5) there exists no issue of fact precluding summary judgment on defendant's counterclaim and judgment should be entered in favor of defendants.

Plaintiff objects to the Judge's Report and Recommendation on the grounds that his findings are contrary to law.

Upon a *de novo* review of the record, the arguments of counsel and pursuant to the record of the hearing, the Court holds that there are issues of fact which preclude summary judgment regarding the counterclaim. Therefore, the Motions for Summary Judgment of the plaintiff (doc. no. 44) and the defendant (doc. no. 43) are **DENIED**. Further, the Court finds that the Magistrate Judge has accurately set forth the controlling principles of law and properly applied them to the particular facts of the ERISA claims and agrees with the Judge's recommendation that the plaintiff is not eligible to receive severance benefits.

Accordingly, the Court hereby **ADOPTS AS MODIFIED** the Recommendation of the United States Magistrate Judge (doc. no. 49). Plaintiff's Motion for Award of Benefits (Miscellaneous Relief) (doc. no. 33) and Amended Motions for Award of Benefits doc. no. 44) are **DENIED**; defendant's Motion for Summary Judgment (doc. no. 35) is **GRANTED**. The plaintiff is not eligible for severance benefits. Plaintiff's Complaint is **DISMISSED**. The case shall proceed to trial on the counterclaim of defendant according to the schedule established by the Court.

**IT IS SO ORDERED.**

s/Herman J. Weber  
Herman J. Weber, Senior Judge  
United States District Court

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